THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 1249 of 2001.
(Old FAFO No. 1109 of 1994)

1. Ratan Singh son of late Sri Moti Singh,
2. Harak Singh, son of Ratan Singh,
3. Hayat Singh son of Ratan Singh
4. An Singh, son of Ratan Singh, All resident of Manadhar, Post Office Dhanachuli, Patti Sunder Khal, District Nainital.

…. **Appellants**

Vs.

1. Hina Suppliers and Tansport, Sri Nasir Khan, son of Sri Javed Khan, T.Mal Mal, District Nainital.
2. United India Insurance Co. Ltd., Lucknow.

….. **Respondents.**

Sri Lalit Belwal, learned counsel for the appellant-claimants.
Sri Harsh Vardhan Sah, Adv., learned counsel for the respondent no. 1.
Sri D.S. Patni, Adv., learned counsel for the Insurance Company.

Date November 09, 2006
P.C.: Hon'ble B.S. Verma, J.

The present appeal under Section 173 of the Motor Vehicles Act 1988 (***for short the new Act***) is directed against the judgment and award dated 1-8-1994 passed by the then Motor Accident Claims Tribunal/Special Judge, Nainital (for ***short the Tribunal***) in Motor Accident Claim Petition No. 179 of 1983, Ratan Singh and others Vs. Hina Suppliers and Transport, whereby a compensation of 32,000/- was awarded to the claimants along with interest @ 12% per annum payable by the Insurance Company. Aggrieved, the claimants have come up in appeal for enhancement of the compensation amount.

Relevant facts of the case are that Bachi Singh, aged 19 years, son of claimant no.1 Ratan Singh was coming from Nainital to Kaladhungi by Truck No. UP 32-A-2949. When this truck reached Barapaththar, the truck met with an accident due to the rash and negligent driving by the driver of the truck with the result, the truck fell in the ravine. He was cleaner in the truck in question. As a result of the accident, the deceased Bachi Singh suffered grievous injuries and died on the spot. The claimants are

the legal heirs of the deceased and they claimed compensation of Rs. five lacs for the death of Bachi Singh.

The owner of the truck contested the claim petition and filed written statement. The owner has denied that there was rash and negligence on the part of the driver of the truck, rather the accident was alleged to have taken place due to technical defect and on account of rains. It was asserted that the truck was duly insured, therefore, the insurance company is liable for compensation.

The insurance company contended that the accident occurred not on account of rashness and negligence on the part of the driver, but due to slippery road. Plea of non-joinder was also taken.

On the pleadings of the parties, the following issues were framed in the case:-

1. *Whether Bachi Singh died due to rash and negligent driving of truck no. UP-32A 2949 in the night of 5/6-12-1992? If so, its effect?*
2. To what amount of compensation, if any, the claimants are entitled? If so, from which of the respondents?

The claimants filed copy of F.I.R., photo copy of insurance policy and post mortem report. Claimants examined P.W.1 Ratan Singh, father of the deceased. From the side of the respondents no documentary or oral evidence was led.

It is evident from the original record of the case that on 8-7-1994, the claimants and the Insurance Company moved application to the effect that parties have arrived at a compromise with respondent no.2 United India Insurance Company and the United India Insurance Company will pay to the applicants a sum of Rs. 80,000/-. This compromise deed is paper no. 21-Kha. The signatures of the claimants were identified by Sri Jawed Samsi,

Advocate and the signatures of the Divisional Manager of the Insurance Company, Sri R.K. Agrawal were identified by Sri Prabhat Pande Advocate. This compromise was duly verified in presence of the learned Tribunal on 8-7-1994 as is evident from the endorsement made to the above on the reverse of the compromise by the Tribunal. The order-sheet of the case drawn for 1-8-1994 indicates that compromise between the parties was filed as paper no. 21-Kha and the claim petition was decided in terms of the compromise and the claim petition was decreed for a sum of Rs. 80,000/- in favour of the claimant no. 1 and against the opposite party no.2. It was also ordered that if the payment is not made within two months, the claimant shall get compensation @ 12%.

The only ground on which the impugned award has been challenged by the claimant-appellants is that the award was passed on the basis of compromise for a sum of Rs. 80,000/-. It has been contended that the compromise was legal. It was duly signed by the Divisional Manager of the Insurance Company on the one hand and the claimant Ratan Singh on the other. Signatures of both the parties were duly verified in presence of the Tribunal. The order-sheet of the case also indicates that the claim petition was decreed for a sum of Rs. 80,000/- and not Rs. 32,000//- , therefore, there was no occasion for the learned Tribunal to have recorded another judgment with a different finding. It has been contended that the compromise arrived at between the two parties was final.

Learned counsel for the appellant vehemently argued on behalf of the claimants that once the compromise was arrived at between both the parties before the Tribunal on 8-7-1994 and the Insurance Company agreed to pay a sum of Rs. 80,000/- to the claimant, the judgment dated 1-8-1994 recorded by the learned Tribunal is not tenable and it is clearly mis-use of process of law and gross negligent act on the part of the Presiding Officer. It was also urged that no such application was moved by the Insurance

Company that the compromise was signed by its Officer under coercion or otherwise.

It is not dispute that the compromise was arrived at between the parties vide paper no;. 21-Kha on record and by this compromise it was agreed by the Insurance Company to pay compensation of Rs. 80,000/- to the claimant Ratan Singh, with whom the compromise was arrived at. The order-sheet of the case also corroborates this fact that in fact the compromise was filed and the claim petition was decreed for compensation of Rs. 80,000/-. When the entire facts on record are so crystal clear, therefore, the learned Tribunal was not justified in recording a separate finding purporting to decide the case on merit. Such an act on the part of the Tribunal has to be looked with serious concern.

In the facts and circumstances of the case, the appeal filed by the claimants has to be allowed. It is accordingly held that the Motor Accident Claim Petition no. 179 of 1993 is decreed for compensation of Rs. 80,000/-(eighty thousand) payable by United India Insurance Company in terms of compromise entered into between the parties. In the circumstances of the case, the order dated 1-8-1994 passed on the order-sheet of the Claim Petition is upheld. The claimant no. 1 Ratan Singh is reported to have died and his legal heirs-appellant nos. 2 to 4 are already on record. they shall be entitled to the compensation amount in equal shares.

The impugned judgment and order dated 1-8-1994 awarding compensation of Rs. 32,000/- to the claimant no.1 is set aside. The order passed on the basis of the compromise (paper no. 21-B) on the order-sheet dated 1-8-1994 is maintained for a comp9ensation of Rs. 80,000/- along with interest @ 12% as mentioned therein and the claimant-appellant nos. 2 to 4 shall have equal share in the compensation amount.

(B.S. Verma,J.)

RCP